

PLM-11

12548



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195686

DATE: January 15, 1980

MATTER OF: Daisy E. Moore

DIGEST: Selective Service System employee in grade GS-4, step 5, voluntarily transferred to grade GS-3, step 1, in the Forest Service. Pay rate was set in accord with agency regulation on application of the highest previous rate rule which provided exception from its application for compelling administrative reasons--here funding constraints. -



Ronald D. King, Director, Contract and Appeals Division, American Federation of Government Employees, requests reconsideration of our Claims Division's disallowance of the claim of Daisy E. Moore for salary adjustment and backpay for error in setting her pay rate upon transfer to the Forest Service in May 1973.

Ph 603.631

ABE/B

Daisy E. Moore, an employee of the Selective Service System whose position as a GS-4, step 5, purchasing agent, was being abolished because of the closing of the office where she worked was interviewed for and accepted a position as a GS-3, step 1, clerk-stenographer with the United States Forest Service in the Department of Agriculture. At the time of her interview with the Forest Service, the personnel officer informed Ms. Moore that due to funding constraints she could only be placed with the Forest Service at a GS-3, step 1, level. At the time of her transfer the Forest Service Manual provided that:

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"It is the policy of the Forest Service to pay an employee at the highest previous rate permitted by law or regulation, unless there are compelling administrative reasons to do otherwise. Whenever the highest previous rate is not used, a justification statement will be prepared and a copy filed

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on the right side of the employee's official personnel folder." (Reference FSM 6153.12(c).)

At the time Ms. Moore was advised of the budgetary constraints which did not permit her being hired at a salary higher than the GS-3, step 1, the justification statement specified in the Forest Service Manual was not inserted in her personnel file.

The agency denied Ms. Moore's claim on the basis that GS-3, step 1, was determined due to the budget restrictions as explained to Ms. Moore at the time of her transfer which was a compelling administrative reason not to pay at the highest previous rate.

The statutory authority for establishing pay rates in cases involving the highest previous rate of compensation is 5 U.S.C. 5334(a) (1976). This provision authorizes the establishment of basic pay rates to be accomplished in accordance with regulations promulgated by the Civil Service Commission (now Office of Personnel Management). Those regulations found in 5 C.F.R. 531.203(c) grant discretionary authority to the various agencies to apply the highest previous rate so that an individual upon reemployment or transfer may be paid above the minimum rate of the grade to which appointed based upon prior employment at a higher rate.

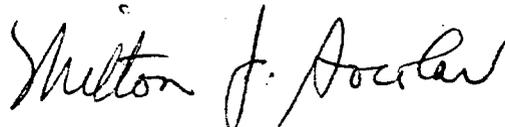
The statute and implementing regulation give to the employing agency discretionary authority in the application of the highest previous rate rule. It permits each agency to formulate its own policy regarding the application of the rule. B-195032, July 25, 1979; B-192890, January 10, 1979; B-190257, September 13, 1978; and B-177647, April 18, 1973.

On the record we do not find that the agency erred in establishing Ms. Moore's rate of compensation at GS-3, step 1. The failure of the administrative agency to place a justification statement in her personnel file was procedural only since she had been personally informed concerning the budget constraints and voluntarily accepted the position. The failure to follow the

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instructions in section 6153.12c of the Forest Service Manual is not sufficient to establish that the employee is entitled to higher rate of pay.

Accordingly, the action of our Claims Division in denying the claim is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States